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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

EDGAR MARTINEZ, et al., Plaintiffs and Respondents, v. AUTOZONE, INC., Defendant and Appellant.	B207013 (Los Angeles County Super. Ct. No. BC 311443)

APPEAL from a judgment and an order of the Superior Court of Los Angeles County. Edward A. Ferns, Judge. Affirmed as modified.

Littler Mendelson, Jeremy A. Roth and Jerrilyn T. Malana for Defendant and Appellant.

Gould & Associates, Michael A. Gould and Aarin A. Zeif; Daniel G. Emilio for Plaintiffs and Respondents.

Stephen Danz for Objector and Respondent Claudia Moreno.

AutoZone, Inc. timely appealed from the trial court's March 20, 2008, order denying its motion to set aside void judgment as well as the underlying December 14, 2007, judgment.[1] In this class action, AutoZone and the plaintiffs reached a settlement agreement which was approved by the trial court and affirmed by this court after objectors challenged the settlement. However, this court remanded that matter for the trial court to enter a new judgment conforming to the settlement agreement. AutoZone contends that judgment was void as it failed to accurately reflect the claims settled by plaintiffs and AutoZone. We affirm as modified.

FACTUAL AND PROCEDURAL SYNOPSIS

I. The Complaint

In March 2004, three former employees of AutoZone filed a putative class action against AutoZone in superior court to recover penalties and damages for alleged violations of the Labor Code and Industrial Commission Orders, i.e., deductions from wages, meal and rest period compliance, earnings statement compliance, expense reimbursement, and final paychecks. The complaint alleged derivative causes of action for unfair business practices and additional statutory penalties. Plaintiffs filed a first amended complaint asserting the same basic factual allegations and causes of action.

In June 2005, the parties reached a settlement after engaging in discovery and after plaintiffs filed a motion for class certification. The parties notified the court of the settlement on June 6, prior to the hearing on the motion for class certification.

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[1] Appellant filed its appeal on April 3, 2008. Filing a motion to vacate a judgment extends the time to appeal the underlying judgment until 30 days after the superior court order denying the motion. (Cal. Rules of Court, rule 8.108(c).) The order denying the motion to set aside is separately appealable. (*Generale Bank Nederland v. Eyes of the Beholder Ltd*. (1998) 61 Cal.App.4th 1384, 1394.)

II. The Settlement Agreement

A. The Terms

The parties filed with the court their draft joint stipulation of settlement and release (the Settlement Agreement), which provided for payment up to $1 million for dismissal of the action and the release of all claims arising from the events alleged in the action. The basic payment components were: (1) approximately $632,500 to eligible class members, distributed pro rata among class members who filed timely claims based on their respective work weeks; (2) service payments of $3,500 each to plaintiffs, who had executed general releases of all individual claims; (3) administrative fees not to exceed $50,000; and (4) attorney's fees and costs not to exceed $307,000.

The release language of the Settlement Agreement stated:

> 20. Upon the final approval by the Court of this Stipulation of Settlement, and except as to such rights or claims as may be created by this Stipulation of Settlement, the Settlement Class and each member of the Class who has not submitted a valid Request for Exclusion Form, fully releases and discharges Defendant, its present and former parent companies, owners, subsidiaries, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be jointly liable with Defendant or any of them, from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action for, or which relate to, the nonpayment of wages under the Fair Labor Standards Act, the California Labor Code and any other applicable federal, state or local law, penalties under the California Labor Code (including, but not limited to, penalties under Labor Code sections 201, 202, 203, 226, 226.7, 558, 2699 and under Wage Orders 4 and 7 of the Industrial Welfare Commission), claims for missed meal and rest periods, unlawful deductions from any bonus plans, mileage and expense reimbursement, and any other claims alleged in this case, including without limitation all claims for restitution and other equitable relief, liquidated damages, punitive damages, waiting time penalties, penalties of any nature whatsoever, retirement or deferred compensation benefits claimed on account of unpaid overtime, attorneys' fees and

costs, from March 2, 2000 up to and including the date of execution of this Settlement Agreement, arising from employment by Defendant within California.

a. The Settlement Class and each member of the Class who has not submitted a valid Request for Exclusion Form forever agrees that he or she shall not institute, nor accept payment for unpaid wages or back pay, meal and rest period penalties, liquidated damages, punitive damages, penalties of any nature, attorneys' fees and costs, or any other relief from any other suit, class or collective action, administrative claim or other claim of any sort or nature whatsoever against Defendant, for any period from March 2, 2000 up to and including the date of execution of this Settlement Agreement, relating to the Claims being settled herein and **claims based on the same operative facts** as the claims being settled herein, for the time period they were employed by Defendant during the class period. (Emphasis added.)

Paragraph 9 of the Settlement Agreement limited the release to claims arising from the facts and events alleged in the action: "It is the desire of the parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or related to this case. In order to achieve a full and complete release of Defendant, each Class Member acknowledges that this Stipulation of Settlement is intended to include in its effect all claims of any nature arising from or related to this case, and all claims of any nature with respect to the various wage and hour issues raised in the Complaint."

B. Approval and Notice

The court entered an order for preliminary approval of the settlement and reviewed the parties' proposed notice of settlement. The notice essentially paralleled the release language in the Settlement Agreement and specifically stated the release covered claims arising from the facts alleged in the case.

Objectors Claudia Moreno and Michele Medrano appeared at the final approval hearing and objected to the settlement on several grounds. Carl Myart also appeared at the final hearing and objected to the settlement.

In December 2005, the trial court granted final approval of the settlement and rejected the various objections to the settlement. The final approval order and judgment released AutoZone from all claims set forth in the Settlement Agreement and barred class members from instituting any action in state or federal court to prosecute claims covered by the Settlement Agreement.

III. Prior Appeal

Objectors Moreno and Medrano appealed from the judgment contending the trial court abused its discretion when it approved the settlement because it did not carefully review the proposed settlement to determine if the settlement was fair, reasonable and adequate. The objectors further contended the judgment should be reversed because it released claims for unpaid overtime that were not litigated by the parties and because the class notice was flawed in that it did not give notice of the claims to be released. During the pendency of the appeal, objectors were prosecuting similar wage and hour class actions against AutoZone in Oregon as well as in federal court in the Northern District of California.

This court affirmed the trial court's approval of the Settlement Agreement, but reversed the judgment, stating:

> [T]he court stated appellants did not need to be concerned with the res judicata effect of the Settlement Agreement because it did not release the overtime claims asserted in their federal action. However, the judgment entered by the court seems to contradict that statement as it refers to the release of claims under sections 1194 and 510, which respectively give an employee a cause of action if not paid overtime and define how overtime is calculated. In addition, the judgment does not refer to the release of claims under code sections cited in the complaint and the Settlement Agreement.

This court remanded the matter for the trial court to enter a judgment "which conforms to the Settlement Agreement and notices by listing those claims, such as overtime, not covered by the Settlement Agreement." This court concluded that "[i]f the judgment is corrected, the notices will have correctly reflected the claims to be released by the Settlement Agreement."

IV. Judgment Following Remand

Following remand, plaintiffs and AutoZone submitted a joint proposed amended judgment, and objector Medrano filed two proposed amended judgments. At a status conference, the court instructed the parties to submit another proposed amended judgment conforming to its earlier order approving the settlement and to this court's order.

Plaintiffs and AutoZone filed a joint amended stipulation and proposed order to amend the original judgment to include all "settled claims." Their proposed judgment tracked the release language in the Settlement Agreement; in particular, the language stated:

> 3. This action and all settled claims of Plaintiffs and each member of the Final Settlement Class against AutoZone, Inc. are dismissed with prejudice. All members of the Final Settlement Class are bound by the release of the settled claims. The "settled claims" include all claims set forth in the Joint Stipulation of Settlement and Release . . . and Class Notice as follows: All claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action for, or which relate to, the nonpayment of wages under the Fair Labor Standards Act, the California Labor Code and any other applicable federal, state or local law, penalties under the California Labor Code (including, but not limited to, penalties under Labor Code sections 201, 202, 203, 226, 226.7, 558, 2699 and under Wage Orders 4 and 7 of the Industrial Welfare Commission), claims for missed meal and rest periods, unlawful deductions from any bonus plans, mileage and expense reimbursement, and any

other claims alleged in this case, including without limitation all claims for restitution and other equitable relief, liquidated damages, punitive damages, waiting time penalties, penalties of any nature whatsoever, retirement or deferred compensation benefits claimed on account of unpaid overtime, attorneys' fees and costs, from March 2, 2000 up to and including July 28, 2005, arising from employment by AutoZone, Inc. within California. Defendant AutoZone, Inc. shall be unconditionally released and forever discharged from the claims set forth above, and articulated in the Settlement Agreement and Class Notice.

. . . .

5. Each and every member of the Final Settlement Class and every person acting on his or her behalf (including, but not limited to, attorneys, representatives, and agents of any member of the Final Settlement Class) is hereby permanently and forever barred and enjoined from instituting, directly or indirectly, any action in the California Superior Court, any federal or state court or other tribunal or forum of any kind against Defendant AutoZone, Inc. that asserts any claim as delineated in Paragraph (3) above. The Final Settlement Class and each member thereof shall not institute, not accept payment for unpaid wages or back pay, meal and rest period penalties, liquidated damages, punitive damages, penalties of any nature, attorneys' fees and costs, or any other relief from any other suit, class or collective action, administrative claim or other claim of any sort or nature whatsoever against Defendant, for any period from March 2, 2000 up to and including July 28, 2005, relating to the Claims being settled herein and claims based on the same operative facts as the claims being settled herein, for the time period they were employed by Defendant during the class period. (Emphasis deleted.)

Medrano objected to the version of the amended judgment proposed by plaintiffs and AutoZone and filed her own version of another proposed amended judgment. At the hearing, AutoZone raised the issue of Medrano's motivation as she was continuing to prosecute her similar wage and hour class action in federal court.

On December 14, 2007, the court entered judgment using the version proposed by Medrano. The judgment listed claims not covered by the Settlement Agreement: (a) overtime; (b) premium pay; (c) minimum wage; (d) wages for off-the-clock work; (e) split shift wages; (f) late pay (waiting time penalties); (g) wrongful requirement of paying for uniform, and wrongful deductions as they relate to uniform violations; (h) breach of contract for minimum wage, overtime, off-the-clock wages, and timely pay upon termination; (i) conversion and theft of labor; (j) attorney's fees, costs and interest; (k) all claims that accrue after the class period; (l) failure to pay wages timely for each pay period for claims listed in (a)-(k); (m) punitive damages for claims listed in (a)-(k); (n) itemized wage statement violations for claims listed in (a)-(k); (o) damages for unfair competition violations for claims listed in (a)-(k); and (p) penalties for violations of the Private Attorney General Act of 2004 for claims listed in (a)-(k). The judgment excluded the claims Medrano was prosecuting in her federal court action.

The judgment released AutoZone from "all claims, liabilities, . . . arising during the Class period as set forth in the Joint Stipulation of Settlement and Release and as set forth in the Notice sent to the Class, except as provided in paragraph 1 [listing claims not covered]."

V. Post Judgment Developments

On December 6, 2007, the Bailey Pinney firm, counsel for objector Medrano, was disqualified based on ethical violations in Medrano's federal court action against AutoZone; in its order, the federal court specifically referred to this matter. Subsequently, the superior court granted the firm's request to be relieved as counsel in this matter.

A. Motion to Set Aside

On January 31, 2008, AutoZone filed a motion to set aside void judgment or, in the alternative, request for clarification. AutoZone argued the judgment was void because it did not reflect the terms of the Settlement Agreement and did not settle claims arising from the same operative facts. AutoZone asked the court to clarify the judgment was intended to include a release of all claims based on the same operative facts as the other claims being settled.

B. Proposed Stipulated Amended Judgment (Proposed Amended Judgment)

On March 17, while the motion to set aside was pending, plaintiffs appeared ex parte to request entry of another version of a joint amended judgment based on the stipulation of plaintiffs and AutoZone. The Proposed Amended Judgment released all claims referenced in the Settlement Agreement and class notice. The Proposed Amended Judgment also included a list of claims "not covered" by the Settlement Agreement as ordered by this court.

Plaintiffs noted that the case had been filed over four years ago and settled over two years ago and that class members called counsel nearly every day asking about the status of the settlement checks. Plaintiffs requested the court enter judgment arguing the Proposed Amended Judgment addressed the concerns of the parties and the courts. AutoZone appeared at the ex parte hearing and joined with plaintiffs in urging the court to enter the Proposed Amended Judgment.

The Proposed Amended Judgment contained the following language pertaining to the release of claims:

3. This action and all settled claims of Plaintiffs and each member of the Final Settlement Class against AutoZone, Inc. are dismissed with prejudice. All members of the Final Settlement Class are bound by the release of the settled claims. The "settled claims" are set forth in the Joint Stipulation of Settlement and Release (the "Settlement Agreement") and Class Notice.

4. Each and every member of the Final Settlement Class and every person acting on his or her behalf (including, but not limited to, attorneys, representatives and agents of any member of the Final Settlement Class) is hereby permanently and forever barred and enjoined from instituting, directly or indirectly, any action of any kind and in any forum, against AutoZone, Inc. that asserts any of the settled claims set forth in the Settlement Agreement and Class Notice.

5. This judgment bars all legal claims and remedies as specified in the Settlement Agreement and Class Notice.

6. Settled claims do not include those claims or remedies which do not arise from the operative facts set forth in the pleadings, and as specified in the Settlement Agreement and Class Notice, such as:

(a) unpaid wages, including overtime wages, unrelated to work time for missed meal and rest periods;

(b) split shift wages unrelated to work time for missed meals and rest periods;

(c) failure to reimburse for the purchase of uniforms;

(d) unlawful wage deductions for the purchase of uniforms;

(e) breach of contract for unpaid wages unrelated to missed meal and rest periods;

(f) conversion and theft of labor unrelated to missed meal and rest periods;

(g) penalties for claims not settled in this action; and

(h) all claims that accrue after the class period.

On March 20, 2008, the court denied the motion to set aside void judgment and did not clarify the judgment as requested by AutoZone. The court also denied the ex parte application to enter the Proposed Amended Judgment.

DISCUSSION

Appellant contends the trial court erred in denying its motion to set aside void judgment because (1) the judgment did not state it settled all claims "based on the same operative facts," and (2) the court modified or rewrote the terms of the Settlement Agreement by listing in the judgment as excluded claims that were in fact covered by the Settlement Agreement.[2] We review de novo a trial court's determination as to whether a judgment is void on its face.[3] (See *Cruz v. Fagor America, Inc*. (2007) 146 Cal.App.4th 488, 495-496.)

I. Same Operative Facts

Appellant moved to set aside the judgment as void on the ground the court did not have the authority to enter a judgment which was not in exact conformity with the release language of their Settlement Agreement. Appellant argues the court did not have the

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[2] Plaintiffs filed a respondents' brief simply asserting that if this court concludes the judgment does not comport with the Settlement Agreement, then this court should amend the judgment to conform to the parties' Proposed Amended Judgment.

[3] In its reply brief, appellant argues objector Moreno lacks standing to appear in this action because she filed for bankruptcy and any claims she had are now the property of the bankruptcy trustee and because she never appeared in the superior court during the proceedings leading up to entry of the judgment at issue and did not oppose the motion to set aside the judgment. Moreno did not request permission to address these arguments. Accordingly, we will disregard Moreno's brief as she forfeited her arguments by not raising them below. (See *In re Sheena K*. (2007) 40 Cal.4th 875, 880, fn. 1; *Saret-Cook v. Gilbert, Kelly, Crowley & Jennett* (1999) 74 Cal.App.4th 1211, 1228.)

authority to enter a judgment which rewrote the parties' Settlement Agreement by excluding a key provision of the Settlement Agreement, i. e., the release of claims based on "the same operative facts" as the settled claims. Thus, appellant requests this court to direct the trial court to enter a new judgment including the release language from paragraphs 20 and 20(a) of the Settlement Agreement relating to settling claims based on the same operative facts. Appellant also suggests that by not including that language the court modified the Settlement Agreement by awarding greater relief than the parties agreed to in the Settlement Agreement such that the judgment was beyond the jurisdiction of the court.

"A judgment is void if the court rendering it lacked subject matter jurisdiction or jurisdiction over the parties. Subject matter jurisdiction 'relates to the inherent authority of the court involved to deal with the case or matter before it.' Lack of jurisdiction in this 'fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties.' [¶] In a broader sense, lack of jurisdiction also exists when a court grants 'relief which [it] has no power to grant.' Where, for instance, the court has no power to act 'except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites,' the court acts without jurisdiction in this broader sense." (Citations omitted.) (*Carlson v. Eassa* (1997) 54 Cal.App.4th 684, 691.)

"[T]he trial court is under a duty to render a judgment that is in exact conformity with an agreement or stipulation of the parties. 'If interpretation of a stipulation is in order the rules applied are those applied to the interpretation of contracts. It is not the province of the court to add to the provisions thereof; to insert a term not found therein; or to make a new stipulation for the parties." (Citations omitted.) (*Jones v. World Life Research Institute* (1976) 60 Cal.App.3d 836, 840; see also *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, 471 ["[A] consent judgment is in the nature of a contract, subject to interpretation and construction. It is binding only as to the matter consented to by the stipulation . . . is confined only to issues within the stipulation . . . and does not cover matters not in the stipulation." (Internal quotation marks & citation

omitted.); *Jeff D. v. Andrus* (9th Cir. 1989) 899 F.2d 753, 758 ["[C]ourts are not permitted to modify settlement terms or in any manner to rewrite agreements reached by parties. The court's power to approve or reject settlements does not permit it to modify the terms of a negotiated settlement. In may only approve or disapprove the proposal." (Citations omitted.)].)

We conclude there is no need to amend the judgment to include claims "based on the same operative facts" as the judgment released AutoZone from "all claims, liabilities, . . . arising during the Class Period as set forth in the Joint Stipulation of Settlement and Release and as set forth in the Notice sent to the Class, except as provided in paragraph 1 [listing claims not covered]." Thus, because it incorporated paragraphs 20 and 20(a) of the Settlement Agreement, the judgment did not add provisions, insert terms or rewrite the Settlement Agreement by not expressly stating it included claims "based on the same operative facts."

II. Excluded Claims

Appellant contends the judgment is also void as an attempt to rewrite the Settlement Agreement as the judgment excluded certain claims actually settled by the parties and thus narrowed the scope of the released claims or created an ambiguity with regard to the settled claims. Appellant posits the judgment suggests class members may file actions for cumulative remedies (e.g., alleged overtime payments) based on the same alleged missed meal and rest periods when the parties intended to resolve all claims "based on the same operative facts" as the other settled claims.

According to appellant, the judgment created ambiguity by excluding "overtime" and "wages for off-the-clock work" without clarifying the nature of the overtime and off-the-clock claims, meaning it is unclear whether such claims generated by unauthorized on-duty meal periods are/are not included in the settlement. Appellant states the parties settled claims for overtime hours generated by unauthorized on-duty meal periods and

off-the-clock arising from missed meal periods as well as all such claims based on the same operative facts.

Appellant complains the judgment excludes "late pay (waiting time penalties)," "failure to pay wages timely," "punitive damages," "itemized wage statement violations," "damages for unfair competition violations," and "penalties for violations of the Private Attorney General Act." Other than the claims for late pay, those claims are limited to claims listed in (a) through (k) of that paragraph as detailed in the synopsis. Appellant asserts all those claims were specifically covered by the Settlement Agreement, which also released Labor Code sections 201 (failure to pay timely wages) and 203 (waiting time penalties) relating to meal period claims and claims arising from the same operative facts.

In denying appellant's motion to set aside, the court expressed concern about adding language about claims "based on the same operative facts," noting appellant for the first time wanted clarification of the meaning of "overtime."

> In sum, the court believes that [appellant] is seeking to over-reach with broad language such as "Same Operative Facts As Those Being Settled," and is seeking to parse language in the judgment as it is commonly understood, and give that language an odd meaning so that [appellant] can argue that specific language is broad and broad language is specific. The point of the argument is to ensure that every matter which is potentially raised in the law of Labor Code §§ 201, 203, 2699, B&P Code § 17200, or any code section which [appellant] believes is somehow implicated in this action, bars any claim which may arise under those laws. But the Court of Appeal held that the parameter of the judgment is determined by the factual content of the complaint, and not by every provision of the statutes cited in the settlement. If the statute cited in the settlement contains language which does not concern the facts raised in the complaint, then the language in the statute has no bearing whatsoever on the judgment. The facts of this case and the language of the cited statutes are not the same things. [¶] In sum, the judgment will not be amended to give more semantic leeway to [appellant], because the Court of Appeal has made clear that the judgment cannot comport with notice requirements when the judgment is vague, and the broad language can be read to bar claims that were not fairly raised in the litigation.

Appellant objects to the trial court's ruling in this regard, asserting it imposes on the parties a piecemeal settlement to which they did not agree. The certainty they seek, however, is beyond the scope of the judgment; whether future claims that may be asserted are, or are not, based on the same operative facts alleged in the complaint here must be determined by looking at those future claims. The judgment in this case cannot avoid the necessity of analysis in a future case.

However, we agree there is some amibiguity in the judgment regarding whether or not claims based on the same operative facts were released. Accordingly, we will direct the court to modify Paragraph (1) of the judgment to read: "This action and all settled claims of Plaintiff and each member of the Settlement Class against AutoZone, Inc., are dismissed with prejudice. Except to the extent based on the same operative facts alleged in the complaint, claims not covered by the Settlement Agreement include the following." (New provision underlined.)

DISPOSITION

Paragraph (1) of the judgment is modified to read: "This action and all settled claims of Plaintiff and each member of the Settlement Class against AutoZone, Inc., are dismissed with prejudice. Except to the extent based on the same operative facts alleged in the complaint, claims not covered by the Settlement Agreement include the following." In all other respects, the judgment is affimed. The order denying the motion to set aside void judgment is affirmed. Each side to bear its own costs on appeal.

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WOODS, Acting P.J.

We concur:

ZELON, J. **JACKSON, J.**